

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
CONSIGLI & ASSOCIATES, LLC,	:	
Plaintiff	:	
	:	20 Civ. 7712 (LGS)
-against-	:	
	:	<u>ORDER</u>
MAPLEWOOD SENIOR LIVING, LLC,	:	
Defendants.	:	
-----X	:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, Plaintiff filed a request for a pre-motion conference on March 25, 2021, requesting leave to supplement the First Amended Complaint “to add causes of action for declaratory judgment and wrongful termination” (Dkt. No. 44). Plaintiff also indicated an intent to file a motion for partial summary judgment or to seek a speedy hearing if leave to add a declaratory judgment claim is granted;

WHEREAS, Defendant filed a response on April 2, 2021, opposing Plaintiff’s requests (Dkt. No. 46);

Wrongful Termination Claim

WHEREAS, Federal Rule of Civil Procedure Rule 15(d) provides, “On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented;”

WHEREAS, Plaintiff filed the First Amended Complaint on January 21, 2021 (Dkt. No. 28);

WHEREAS, Plaintiff has indicated that on March 23, 2021, Defendant terminated the contract underlying the dispute in this case;

WHEREAS, Defendant does not dispute that the contract was terminated;

Declaratory Judgment Claim

WHEREAS, courts have a “broad grant of discretion . . . to refuse to exercise jurisdiction over a declaratory action that they would otherwise be empowered to hear.” *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359 (2d Cir. 2003). To determine when declaratory judgment is warranted courts ask “(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; and (2) whether a judgment would finalize the controversy and offer relief from uncertainty.” *Id.*;

WHEREAS, Plaintiff seeks a declaratory judgment that Defendant “wrongfully terminated the Contract after Consigli had substantially completed its work” to bar Defendants “anticipated counterclaims” and narrow “the scope of discovery and trial;”

WHEREAS, Plaintiff’s requested declaratory judgment is duplicative of its claims in the First Amended Complaint and anticipated wrongful termination claim;

WHEREAS, litigation of Plaintiff’s claims in the First Amended Complaint and anticipated wrongful termination claim would offer Plaintiff the same relief as its requested declaratory judgment claim. The litigation has been pending since September 18, 2020, and the deadline for the completion of fact discovery is May 13, 2021;

WHEREAS, Plaintiff does not explain how declaratory judgment will serve a useful purpose in clarifying or settling the legal issues involved apart from its claims in the First Amended Complaint and anticipated wrongful termination claim. It is hereby

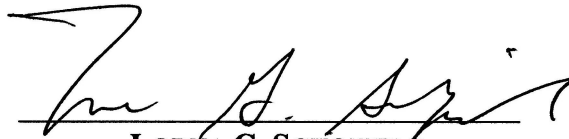
ORDERED that Plaintiff’s application to supplement the First Amended Complaint by adding a wrongful termination claim is GRANTED. It is further

ORDERED that Plaintiff’s application to supplement the First Amended Complaint by adding a declaratory judgment claim is DENIED. It is further

ORDERED that Plaintiff shall supplement the First Amended Complaint by **April 12, 2021**. Defendant shall file its partial motion to dismiss and memorandum of law in support of the motion, not to exceed fifteen (15) pages, by **April 19, 2021**. Plaintiff shall file its memorandum of law in opposition to the motion, not to exceed fifteen (15) pages, by **May 10, 2021**. Defendant shall file any reply memorandum, not to exceed eight (8) pages, by **May 18, 2021**. It is further

ORDERED that the **April 8, 2021**, conference is **cancelled**. If the parties believe that a conference would nevertheless be useful, they should inform the court immediately so the conference can be reinstated.

Dated: April 5, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE